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Africa and the Development of International Law

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Chapter 1

THE CONTRIBUTION OF AFRICA TO INTERNATIONAL LAW

A. *Ancient and Pre-Medieval Africa*

If we are to grasp something of the significance of Africa in current international affairs, we must begin with a brief account of the role which different parts of the so-called Dark Continent played since recorded history in their internal as well as their external relations. An attempt will be made to indicate in the pages that follow how the "trans-Saharan trade routes had woven ties of blood and culture between the peoples north and south of the desert,"[1] between the white and brown peoples of the North African littoral and the negroid peoples of the interior.

It is convenient to begin with the great city of Carthage, which at one time depended on what is now Tunisia and to which the Berber tribes gave their allegiance. While the limits of the area under Carthaginian rule in the hinterland are difficult to determine precisely, they must have been far-flung because African levies formed a large part of the Carthaginian army. African troops took part in Himilco's engagement against the Greeks at Syracuse, and we must recall Hannibal's army's Numidian cavalry. The Carthaginians soon acquired an empire in Africa, from which Sicily, Sardinia and southern Spain were excluded by treaty. Similarly closed to all foreigners was the North African coast west of Cyrenaica. During the sixth century, the Greeks had to give up their settlement between the Syrtes and, in the following century, they were forbidden by treaty to come farther west than the Philaeni Altars.[2] It was mainly this exclusion of Greeks and Romans that must account for the lack of information in the writings of classical authors about the nature and extent of the Carthaginians' African trade. All that we know is that mainly *entrepot* trade, consisting of the carriage of goods from one foreign country to another involving the exchange of the raw products of one for the manufactured goods of another, was carried on between Carthage and her satellite colonies. Wool, skins, timber, purple dye, ivory and ostrich feathers were the principal local products which were sent to foreign ports. Tripoli has from

1. E.W. Bovill, "The Golden Trade of the Moors," the Preface.
2. *Ibid.*, pp. 20-1.

ancient to modern times served as the "gateway of the Sahara," not only to the Carthaginians, but also to modern explorers like Denham, Clapperton and Barth, who all used it as the base for their travels into the heart of Africa. It is already well known that, in 1943, General Leclerc's gallant column marched from Lake Chad through the Garamantian road to Tripoli.

The Carthaginian wealth in gold owed its origin to the west coast of Africa. To Herodotus we owe this account of the so-called "silent trade" between the West Africans and their customers. "The Carthaginians also relate the following: There is a country in Libya, and a nation, beyond the Pillars of Hercules, which they are wont to visit, where they no sooner arrive but forthwith they unlade their wares, and, having disposed them after an orderly fashion along the beach, leave them, and, returning aboard their ships, raise a great smoke. The natives, when they see the smoke, come down to the shore, and, laying out to view so much gold as they think the worth of the wares, withdraw to a distance. The Carthaginians upon this come ashore and look. If they think the gold enough, they take it and go their way; but if it does not seem to them sufficient, they go aboard ship once more, and wait patiently. Then the others approach and add to their gold, till the Carthaginians are content. Neither party deals unfairly by the other: for they themselves never touch the gold till it comes up to the worth of their goods, nor do the natives ever carry off the goods till the gold is taken away."

As is well known, the Romans razed Carthage in consequence of the Imperial charge: *Carthago delenda est.* In the act, they destroyed a Punic inscription in the temple of Chronos which commemorated the famous Hanno expedition to West Africa, but which had been copied by Greeks and Romans and thus preserved for posterity, albeit in a mutilated and corrupt form. The story may be told quite briefly. About the fifth century, the Carthaginian sent out an expedition under Hanno, one of its two Chief Magistrates, to found colonies on the African coast beyond the Pillars of Hercules. After two days' sail Hanno founded the first colony, later the second and, further down the coast, five more. Thereafter, he discovered in succession the Senegal River and the Gambia estuary, the headland of Sierra Leone, the Cameroon Mountain then in eruption (which they called the Chariot of the Gods), and finally the Gabon River. Because he ran out of supplies, Hanno and his team returned to Carthage. There can be little doubt that gold was the object of the expedition and that what they called the Chretes was certainly Senegal, "which flows directly from the richest of the Old West African goldfields, where the silent trade in gold was traditional down to modern times, and from which gold flowed northwards across to Sahara through many centuries."[3]

Hanno was followed by certain Portuguese seamen sent out by Prince Henry the Navigator. This expedition, which was avowedly to spread the Gospel, would seem to have been motivated, like Hanno's, by the desire to discover the source of the gold being imported into Morocco overland through the Taghaza road, which was the most westerly of the trans-Saharan caravan routes. Another suggestion has been that both expeditions might have originated in the desire to emulate the alleged circumnavigation of the continent by the Phoenicians under Pharoah Necho (609-588 B.C.). Although the Portuguese were the first Europeans to explore the west coast of Africa thoroughly, nevertheless, such has been the fame of Hanno's voyage that some writers have scented Punic influences up and down the coast of Guinea; for example, the once fashionable ascription of the Benin bronzes and Ife *terra cotta* to European origin. Mr. E.F. Gautier is reported to have written: "That Nigeria is such a place because, if one is to speak directly it is a Mediterranian colony, in our direct attempt to Carthaginians."[4] Bovill's comment on this example of what modern historians of Africa call the Hamitic Hypothesis is as follows: "It is highly improbable that a race so uncreative as the Carthaginians, whose chief industry was the making of cheap-jack trade goods in debased imitation of Greek and Egyptian originals, could have influenced the arts and crafts of West Africa had they had the opportunity which only permanent settlement could have given. There is no evidence that they had such an opportunity."[5]

This brief outline should serve as an interesting background to the account now to be given of how the Sahara may be said to have dominated the history of the north no less than it has done that of the south. It will also show that, through the great caravan routes which linked Carthaginian and Roman cities in the north with the great markets and modest seats of learning in the south, the Sahara has served to influence the fortunes of Barbary and that, for several centuries, the wealth and industry of the Sudanese never ceased to attract Arabs and Berbers, Jews and Christians from the north. There are some historical accounts of the inter-relationships between the East African littoral and the Arabs, the Chinese and the Europeans, as well for purposes of trade as for exploration and adventure. And although research still has to reveal such trade routes and culture contacts as there may have been between West and East Africa in early and medieval times,[6] there is nevertheless some evidence of intermingling of the races especially in West Africa which suggests large-scale migrations of peoples from one part of the continent to another.[7]

3. *Ibid.*, p. 28.

4. Quoted at p. 29 of Bovill, *op. cit.*

5. *Ibid.*, p. 29.

6. A.F.C. Ryder, "Benin and the Europeans (1485-1897)," Longmans Green and Co., Ltd., London, 1969, at pp. 60-61.

7. According to R. Mauny, *Bulletin de l'Institut Française d'Afrique Noire*, IX, 1947, pp. 341-357, Herodotus first recorded the use of four-horse chariots in the middle of the

Ryder has suggested that there is a possibility that the earlier currency shells of Benin called *igos* had also originated in the Indian Ocean and had reached Benin by way of exchange along the trade routes linking East and West Africa. A comparative study of these shell currencies might reveal much about trade routes and culture contacts in Africa. The bead trade of medieval Africa might also be similarly explained. A contract for the trade of Sao Tome signed between King Manuel of Portugal and Fernao Jorge (a Benin) on 26 March 1515, contained a clause stipulating that in each year of its duration, Jorge might bring five hundred quintals of cowries from India as ballast in the ships of the *Carreira da India*, and that these cowries must be used solely for trade with the mainland. This was the earliest reference to Maldive cowries as a commodity in the Guinea trade.[8] Smith has also observed that the widespread use of cowries on the West Coast is "evidence both of the extent to which communications had developed in Africa – cowries were imported via Egypt from the Indian Ocean – and of the existence of a form of money economy which was independent of European contact."[9] Oliver and Fage write: "It was this universality of trade in cloth and other luxuries (in beads, for example) which, together with the largely urban pattern of settlement, chiefly distinguished the Guinea region from all other parts of Africa south of the "Sudanic" savannah belt, at least during late medieval and early modern times.[10]

Some of these interactions between the different parts of Africa will become evident as we study the rise and fall of the more significant medieval African empires and kingdoms, to an account of which we will now turn.

B. *The Indigenous African States (300-1500 A.D.)*

Under this heading will be given snatches of the political, the commercial and the diplomatic history of the more significant of African States and kingdoms during the Middle Ages. It is only against this background that Africa's place in international law and relations can be understood.

Ghana, which, according to recorded history, lasted from 300-1087 A.D., was early in the ninth century known to be carrying on trade with Morocco, the northern *entrepot* of which was Sijilmasa, just south of the Atlas mountains. El-Bekri described Sijilmasa as a city of imposing buildings inhabited by the Tuareg. Its wealth was derived from the gold trade with Ghana, although Wangara was the source of the gold. The salt of Taghaza was essential to the gold trade of Sijilmasa. Between A.D. 734-750 the Arabs despatched an expedition down the Sijilmasa-Taghaza road to attack Ghana, but the expedition failed to achieve its purpose.[11]

It has recently been established by the French archaeologists that extensive ruins about 300 miles west-south-west of Timbuktu mark the site of the ancient capital of Ghana, the city of Kumbi, which is mentioned only once in recorded history in Es-Sadi's Tarikh el-Fettach, the kingdom of Ghana was of considerable age, having had twenty-two kings before the Hejira and as many after. The ruling dynasty was white, but the people were black Mandingoes. Before the Arab invasion the white dynasty had been replaced by a black one drawn from the Soninke branch of the Mandingoes under whom the kingdom reached its apogee in the ninth century, less than a hundred years after the repulse of the Arabs.[12] The approximate frontiers of Ghana were the Niger on the east, and the Senegal and its tributary the Baule on the south; north and west was the desert.[13]

El-Bekri has left us an account of Kumbi, the capital of Ghana, which consisted of two separate towns, about six miles apart. One was reserved for the Muslim population and contained a dozen mosques where distinguished jurists gathered, the other was pagan and the seat of the court. Most of the houses of Ghana were clay huts thatched with straw, but there were also some buildings of stone. The king was the centre of a court where elaborate ceremonial and gorgeous pageantry were the order of the day. There were sons of vassal princes, viziers, the governor of the city; and the pavillion was guarded by hounds, wearing collars and bells of silver and gold, which were the constant companions of the monarch. There were treasurers and interpreters. Kumbi was noted for its slave market, which was kept well supplied by raids on the more primitive bush tribes on the southern frontier, for sale to the merchants from the Maghreb. The kings of Mali, the heirs to the greatness of Ghana, were known in Egypt as the Kings of Tekrur, a name by which people from the west are today known in the eastern Sudan. Ghana remained predominantly pagan and, therefore, a menace to Almoravids'

Sahara, which fact implies that there was some intercourse between the desert peoples and those of the coast.

8. R.S. Smith, "The Kingdom of the Yoruba," p. 7, Methuen and Co., Ltd., London, 1969: the word "Guinea" itself almost certainly derives from the Berber word for Negro. . . . Until the Moroccan invasion of the Sudan, the caravan trade across the Sahara had a continuous history of at least 1,500 years, and thus, political, cultural and economic developments on the Mediterranean coast 2,000 miles away were liable eventually to affect the people of Guinea.

9. *Ibid.*, p. 6.

10. "A Short History of Africa," London, 1962, at p. 110.

11. Bovill, *op. cit.*, p. 67.

12. This point is worth making because of the now exploded theory of the Hamitic Hypothesis which ascribes any highly cultural or intellectual achievements found in Africa to foreign European origins. See, e.g., R.S. Smith, "Kingdoms of the Yoruba," p. 12, 26. Methuen and Co., Ltd., London, 1969; also J.D. Omer-Cooper's article, "The Question of Unity in African History," in the *Journal of the Historical Society of Nigeria*, Vol. III, p. 1, 1964.

13. *Ibid.*, pp. 68-69.

supremacy in the westerns Sahara. It was not till 1076 when Abu Bakr captured Kumbi, massacred its inhabitants and successfully imposed Islam on the whole country which thus became an apanage of the Almoravids. On the death of Abu Bakr in 1087, the crumbling structure of the Almoravids hegemony in the desert disintegrated altogether. Thus, in little more than a decade, did the Soninke of Ghana recover their independence.[14]

Susu or Sosso kingdom seized Kumbi in 1203, and Arab merchants and the richer Soninke trades marched out 100 miles northwards to build a new town, *Walata,* which prospered so much that Ibn Khaldun and Abulfeda mistook it for Kumbi which had perished.

Sundiata (or Mari Juta) founded the Mali empire for the Mandingoes by a series of wars of aggression against his less powerful neighbours, the Susu who had subjugated Kumbi. In 1235 he destroyed the Susu army, and this extended Mali's northern frontier far into the desert. Later extensions westwards reached the Gambia river and the Tekrur marshes. Mali became the most powerful kingdom in the Western Sudan, but owed its subsequent fame in Europe not so much to its territorial extent as to the vast wealth it obtained from the Wangara goldfields.

Mansa Musa, Sundiata's grandson, came to the throne in 1307 and the fame of Mali spread to Europe and the Middle East, largely through his pilgrimage to Mecca. The conspicuous display of wealth caused such a sensation in Cairo and other places that it resulted in a lowering of the local market value of gold.[15] His piety and open-handed generosity also impressed Cairo. Before his return, one of his generals had captured Gao, capital of Songhai, an important riverine kingdom extending along the middle Niger for a thousand miles downstream from the frontier of Mali. He visited Gao *en route* and accepted the personal surrender of the king of Songhai. To ensure the loyalty of his new vassal, he took back with him to mali the king's two sons, Ali Kolen and Sulayman Nar, as hostages.

Timbuktu, which rivalled Gao in importance, lay on Mansa Musa's quickest route home up the Niger and was the meeting place of those who travelled by land and those who travelled by water, the nomads of the desert and the riverine peoples of the Niger. Here they met to exchange salt and dates and merchandise of the Maghreb for the grain, kola-nuts and gold dust of the Sudan. Since 1100 A.D. the traders' tents gave way to huts, and the latter were soon replaced by permanent buildings of sun-dried bricks. By 1300 A.D. it had become an *entrepot* for the trade passing between Walata and Jenne. Situated close to a navigable waterway, Timbuktu had an advantage over all neighbouring markets which it gradually superseded. The resulting commercial prosperity brought also wealth and culture, for Timbuktu soon captured Walata's trade and culture which were then the monopolies of the Jedala, the intelligentsia of the desert, who had made Walata the seat of learning after the seizure of Kumbi by the Susu had led to their exodus from Ghana. Timbuktu had become the great centre of scholarship and culture known to medieval Europe and the world, and to which learned men and others in search of learning came.

Bovill gave this interesting account of Mali at Mansa Musa's death: "With the merchants came the literati and divines of many lands to gather round the noted Jedala scholars of the Sankore mosque. Mansa Musa died in 1332. He left behind him an empire which, in the history of purely African States, was remarkable both for its extent and its wealth, and as a striking example of the capacity of the negro for political organization."[16]

Mansa Musa's Mali prospered mainly because of the assiduity with which he cultivated foreign relations, especially friendship with Egypt and Arabia through his pilgrimage and with Merinid Sultan of Fez. Bovilla commented thus: "He was, in fact, the first to penetrate the iron curtain of colour prejudice which shut off the negro from the civilized world, and to win for the true African a small measure of the respect which, even today, is often grudgingly granted him." Mali's importance is evidenced by the reference to it and its king in a *mappa-mundi* of Angelino Dulcert of Majorca dated 1339, only seven years after Mansa Musa's death.[17]

According to Ibn Khaldun, trade between Mali and Egypt must have been considerable. Takodda, a thriving centre of the caravan trade, owed its prosperity to its copper mines from which the Maghreb, Egypt, Mali, Hausa and Bornu drew their supplies of the precious metal. Mansa Musa once claimed these mines as his most important sources of revenue. By the beginning of the fifteenth century, Mali's decline had set in. The Mandingoes still held some parts of Songhai and the whole of Timbuktu, but had lost Tekrur. The Sanhaja federation of the Tuareg still paid tribute to the king of Mali and supplied troops for the latter's army.[18]

Songhai kingdom, as we have seen, had Gao as its capital and was peopled by black Africans divided into two main clans; fisherfolk and farmers respectively. Their original home had been Dendi, lower down the Niger and a little above Bussa, whence they had spread upstream to Timbuktu. In the ninth century, they were conquered by the Tuaregs from the north and a dynasty was established which lasted over 800 years. Gao, like Kumbi, was divided into a Muslim and a pagan quarter. There was great rivalry between Songhai and Mali and, when the latter's power waned, Sonni Ali recaptured Timbuktu

14. *Ibid.,* pp. 80-85. See also Lady Lugard's "A Tropical Dependency," p. 78-82, and 95-106 for a detailed description of Ghana.

15. 80-100 camel loads of gold, each weighing 300 pounds.

16. *Op. cit.,* p. 90.

17. *Op. cit.,* p. 91.

18. *Op. cit.,* p. 99.

for Songhai before he also regained Jenne, another market and seat of culture.

Askia the Great had a genius for political organization and his respect for religion and learning brought accretion of wealth and culture to Gao and Timbuktu. On his pilgrimage to Mecca, his caravan included an escort of 500 cavalry and 1,000 infantry and he took with him 300,000 pieces of gold. Askia conquered Hausa which lay to the east of his empire. The Hausa States, Gobir, Kano, Zaria and Katsina, extended eastwards from the Niger towards Lake Chad. They were industrious farmers and enterprising traders; they were skilful weavers, dyers, smiths and leatherworkers. Only Kano resisted Askia. The emir of Kano was allowed to retain his kingdom subject to his paying a third of his tribute to Askia who respected him for his bravery and gave him his daughter in marriage. It propably reached its zenith under Muhamed Rimfa (C. 1463-99). The Jukuns actually occupied Kano for a while before Bornu drove them out and took Kano vassal.[19] But Kano became in the nineteenth century the commercial metropolis of the western Sudan. His sons forced him to abdicate in 1528. He left a fine legacy of the art of organized government.

One of the learned men attracted to Gao by Askia's exploits was a certain Muhammed el-Maghili who wrote a book entitled "The Obligations of Princes," a copy of which was recently discovered in Katsina. It was a treatise on government written for the king of Kano, and reveals high ideals and the author's keen appreciation of the practical difficulties of government. He died between 1530 and 1540. Leo Africanus was most probably born in Granada in 1493 or 1494 and, on his account of the country, cartographers and geographers depended for their knowledge of the interior of Africa for the next 300 years. His travels in the western Sudan were described in his book "The History and Description of Africa and the Notable Things Therein Contained," in Italian in 1526.

Throughout the Middle Ages, relations between the maritime peoples of southern Europe and those of the Barbary states were very close. In spite of the difference in religion and the activities of Christian and Muslim pirates who infested the Mediterranean, there was much friendly intercourse between Europe and Africa.[20]

Leo's description of the Songhai of Askia the Great and his court included a reference to those who came "as ambassadors from other princes," as well as a "great store of doctors, judges, priests and other learned men, that are bountifully maintained at the king's cost and charges, and hither are brought

19. According to Lady Lugard's "A Tropical Dependency" at p. 286, the Bornu Empire once extended west of Lake Chad to the north and the east round the lake and far into the desert and almost coterminus with the Egyptian frontiers of the Turkish Empire in the thirteenth century A.D.

20. *Op. cit.*, p. 111.

divers manuscripts or written books out of Barbary. . . . The coin of Timbuktu is of gold without any stamp or superscription." Leo was himself a member of a mission under his uncle's leadership which had been sent by the Shereef of Fez, Mulai Muhammed-el-Kaim to Askia about 1510 A.D. along the Sijilmasa-Taghaza road to *Timbuktu*.[21] Leo later visited the Niger, especially the Hausa States of Zamfara, Katsina, Kano and Zaria, all of which had only recently been desolated by the Songhai invasion and crushed by the heavy burden of tribute imposed on them. Askia had "sent governors hither who mightily oppressed and impoverished the people that were before rich." Leo reached Bornu untouched by Askia's armies. It lay at the southern end of the ancient Garamantian road to the Sudan, the least arduous of all the desert crossings, and therefore continuously in direct contact with the northern markets in the Barbary coast.

The Yoruba of Nigeria claim to have originated from the Phoenicians "of the tribe of Nimrod" who once inhabited the Upper Egypt and founded the Meroe Empire before the fortunes of war drove them westwards across the continent through much of Hausa country until they reached Ile-Ife, their ancestral home, and later spread to Old Oyo and the remainder of Yorubaland about the year 1000 A.D.[22]

The Yoruba kingdom at one time extended westwards as far as Accra and eastwards as far as the banks of the Niger. Shango, the fourth King in Yoruba mythology, is still worshipped throughout Yorubaland, Dahomey and Benin. The kingdom had begun to decay by 1700, although the Yorubas were yet able to capture the chief city of Dahomey in the middle of the eighteenth century and to enforce the payment of tribute therefrom up to 1817.[23]

The Binis are an important offshoot of the Yoruba people, but they had already founded a powerful and independent kingdom when the Portuguese first visited Benin in 1472.[24] In an attempt to introduce Christianity there, King John II (1481-95) of Portugal opened a friendly correspondence with the King of Benin, but the effort had to be abandoned.[25] The

21. Lady Lugard, *op. cit.*, at p. 38 noted that the Secretary of State (Leo) was present when Mansa Musa's ambassadors were received at Fez by Abou-el-Hacan, the Moorish Sultan.

22. See Lady Lugard, *op. cit.*, p. 227ff for an account of this alleged migration.

23. Sir Alan Burns, *History of Nigeria*, 4th edn., 1948, pp. 25-26.

24. *Ibid.*, pp. 38-39.

25. When the Oba of Benin sent his envoys to Lisbon, Portugal, in 1514, it was to get arms because he was then being hard pressed by his enemies. The embassy consisted of two persons called by the Portuguese Dom Jorge and Dom Antonio, perhaps baptized Christians. They had to petition King Manuel on arrival because the ship's captain had stolen their slaves and made life miserable for them when they protested. They returned to Benin in November, 1514, but without the arms until the Oba should agree to become a Christian. The Oba sent another envoy, Pero Barroso, to Lisbon in 1516. See A.F.C. Ryder, "Benin and the Europeans: 1485-1897." Longmans Green and Co., Ltd., 1969, pp. 46-8, 72.

King of Benin who reigned in 1553 spoke Portuguese which he had learnt as a child.[26]

Lourenco Pinto, who was the captain of a Portuguese ship that carried the missionaries to Warri in August 1691, sent this deposition to the *Sacra Congregazione* at the instance of one Father Montelcone:

> "According to the testimony of this captain, Great Benin, where the king resides, is larger than Lisbon; all the streets run straight and as far as the eye can see. The houses are large, especially that of the king which is richly decorated and has fine columns. The city is wealthy and industrious. It is so well governed that theft is unknown and the people live in such security that they have no doors to their houses.
>
> The artisans have their places carefully allocated in the squares which are divided up in such a manner that in one square he counted altogether one hundred and twenty goldsmith's workshops, all working continuously."[27]

Lourenco Pinto apparently mistook the brassworkers of Benin for goldsmiths. It would seem that the Civil War had not at the time of Pinto's writing brought about the devastation which was everywhere apparent by 1700.

The first British ship reached the Benin river in 1553, while the Dutch began their trade forty years later. The trade was at first mainly in cloth, palm oil, cowries and other beads, and ivory.[28] By the middle of the seventeenth century, articles of indigenous manufacture, including cloths, began to play a significant role in Benin's dealings with the European traders. The English, the Portuguese and the Dutch alike, "bought them in thousands for resale on other parts of the African coast."[29] Factories were sited on the main Benin river, as trading became more and more sophisticated. Indeed, alliances were formed to prevent piracy, smuggling and illegal trading on the Benin river.[30]

In the rough and tumble of commercial activities, there were bound to be occasional inter-State frictions between neighbours. For instance, in a letter of 2 August 1526, addressed to King John III of Portugal, the King of the Congo complained about people from Cachen and Benin who were at that time causing trouble in his country.[31] Again, in 1541, there was a further Congolese complaint that Benin slaves as well as freemen were taking part in disturbances provoked by a Portuguese adventurer.[32] The culprits could have been Edo mercenaries taken *via* Sao Tome to the Congo by the Portuguese or

26. Hadluyt, *The First Voyage to Guinea and Benin*, 1553, Vol. II, Pt. II, p. 12.

27. Ryder, *op. cit.*, p. 113. A summary in A.S.C. *acta generalia*, Vol. 64, f. 55, No. 27, April 20, 1694, supplies a few interesting details about Benin City at the time.

28. Ryder, *op. cit.*, pp. 76-8, 84-5.

29. *Ibid.*, p. 93.

30. *Ibid.*, p. 56.

31. Brasio, *Monumenta*, Vol. I, p. 479.

32. A.T.T. Corpo Cronologico I, maco 69, no. 72.

even some other neighbouring ethnic groups. It is doubtful whether they had come directly from Benin, as there would appear to have been no cause for Benin to commit an act of aggression against the Congo at the material time. A British expedition captured Benin in 1897.

By the fourteenth century, many African groups had evolved titles like *mansa, mai, oba* or *ntemi* which had parallels in the contemporary *konig, roi* or *re*. Some of the title-bearers were little more than council chairmen, but others headed large and even vast political aggregations: these great kings, like Mansa Musa and Askia the Great, had even an intercontinental reputation.[33]

Mali kingdom's men of power and office ranged on either side of the silk-emblazoned throne, sombre in their stance and dignity: strong lineage chiefs, governors of provinces, commander of cavalry, judges and men of God, tellers of oracles and other folk of high appointment.[34] Besides these urban splendours and sophistication, there were, of course, the preponderant village communities everywhere, true to the traditional ways of governance, little affected by the centralizing change. The capitals or wealthy trading centres often grew out of former towns or villages where strong rulers had taken power, courts had gathered and bureaucracies had been established. The story of how village governments developed into kingdoms must present the same problem of explanation and rationalization in Africa as in Europe, except that the later arrival of writing must account for the paucity of evidence about early African institutions.[35]

According to Davidson: "It is probably fair to say that the history of kingship in the tropical regions, as distinct from the Nile Valley, Ethiopia and the Maghreb, begins little or no later than that of Anglo-Saxon and Frankish Europe. Once launched, these institutions showed a remarkable continuity." Examples of some famous dynasties are that of Kanem-Bornu in north-eastern Nigeria which has had rulers in unbroken succession for over 1,000 years until the middle of the nineteenth century; again, Songhai dynasty lasted some 800 years; Mossi kingdom in modern Upper Volta had over 500 years under a continuous dynasty; Mali since the days of Mansa Musa has lasted till late into the nineteenth century; the Nwanamutapa in Central Africa is thought to have existed for over three hundred years; the Shona Confederacy would seem to have emerged in Central Africa about the late fifteenth century.[36]

The Barotse, the Bunyoro and the Baganda, King Chaka Zulu, the Swazi, the Lesotho and the Basutos had all evolved kingdoms of sizeable expanse

33. Basil Davidson, *The Africans: An Entry to Cultural History*, Longmans, 1969, London, pp. 183 and 218.

34. Lady Lugard, *op. cit.*, pp. 76-7, described an exchange of gift and embassy between Morocco and Mali.

35. *Ibid.*, p. 184.

36. *Ibid.*, pp. 185 and 187.

and longevity. By 1400, the kingdom of Benin had replaced elective succession with primogeniture; by 1600 Benin had attained its apogee.[37]

Change set in only with the new socio-economic pressures, the gradual substitution of new trade routes for that of the trans-Saharan caravan, the penetration of the continent by European enterprise first in slave-dealing and later in legitimate commerce. The back of the long-distance trade had at last been broken, and with it, empires and dynasties.[38] Among the most powerful instruments of change have been, as we have seen, the Arab invasion of the Sudan, the Atlantic trade and Christianity, as well as the influence of inter-regional borrowing and reaction. The King of Portugal thought that his friend King of the Congo stood at the the apex of an aristocratic hierarchy like his own feudal set-up. In his *regimento* sent from Lisbon to the *Mani-Kongo* in 1512, with its princes and dukes, courts marquises, one discerns social and cultural patterns which, though different in degrees of stratification between lord and vassal or patron and client, yet had recognizable parallels in Africa.[39]

Going out to meet ambassadors from the Othman Sultan towards 1600, the emperor of Bornu took with him a flashing troop of soldiers "all mounted after arraying themselves and their horses in armour, cuirasses, shields and their best apparel." Lord of Istambul, the Sultan of Turkey, sent messengers from his country with favourable proposals.[40]

Soon after 1500, the King of Portugal welcomed an ambassador from the King of Benin and found him "a man of good speech and natural wisdom."[41]

Lady Lugard's own testimony of the diplomatic intercourse between Bornu and Tripoli is as follows: "Embassies from Bornu to Tripoli are frequently mentioned and before the end of the 16th century the armies of Bornu, more advanced than the majority of European troops, were armed in great part with muskets. The Spaniards were ahead of the rest of Europe in this respect. . . ."[42] We may also note the mention of exchange of gifts and embassies between Morocco and Mali.

At the same time that the Portuguese sent embassies to the King of Timbuktu they also sent an embassy to Mossi. They wished to conciliate his goodwill for their trade upon the southern coast. Shortly after 1480 A.D., Sonni Ali worked for two years constructing a canal to join Timbuktu with Aiwalatin.

37. For the constitutional limitations imposed on the African institution of kingship, see ch. 20 of Nature of Kingship in Basil Davidson, "The Africans," and ch. 3 of my "Nature of African Customary Law," in order to show that the king was under the law. See also my chapter in Larsen and Jenks, "Sovereignty within the Law" (1965, Oceana).

38. *Ibid.*, p. 186.

39. *Ibiid.*, p. 204.

40. *Ibid.*, p. 222.

41. *Ibid.*, p. 289.

42. Lady Lugard, *A Tropical Dependency,* Frank Cass and Co. Ltd., 1964, p. 278.

This random selection of the medieval African empires and kingdoms, together with the almost incidental references to their interrelations between them is some evidence of the high degree of the knowledge and the practice of diplomatic law as then known in Europe and Asia. An African jurist and diplomat at the court in Delhi in the fourteenth century, exchanges of envoys and courtesies between the King of Portugal and of Benin as well as between him and that of the Congo in the fifteenth century, alliances for attack and defence between the King of Ghana or of Mali and that of Morocco over the centuries – such were the ordinary types of diplomatic and other forms of intercourse within Africa and between it and the outside world in the Middle Ages. In the sparse record of events available to us, one comes across occasional references to international agreements and concordats between these medieval States, but the historians of these times showed little interest in such matters, and we are the poorer for that. Since their civilization knew the art of writing, almost entirely Arabic characters, there must have been some interesting treaties now lost to us.

C. *Beginnings of European Trade and Colonization*

The British engaged in a crusade to expiate past sin and cut off the supply of African slaves to the trans-Atlantic economy. This mission had been fulfilled on the West Coast by the 1860's – a once prosperous arm of European trade had been lopped off. Hundreds of anti-slave trade treaties had been entered into with minor chiefs and the British had acquired paramount influence along a vast stretch of coast. London was against extending territorial responsibilities.[43] The same policy was applied to the east coast of the continent. Trade consisted of slaves, slave-grown cloves and slave-portered ivory, organized by Arabs and Bayans. The British employed naval blockade with the help of the Sultan of Zanzibar to suppress the slave trade.[44] The opening of the Suez Canal in 1869 was not intended as occupation of Egypt and involvement with the government of the country but only as acquisition of influence over its rulers.

But after 1882, the Victorians saw an almost unbelievable revolution in the political relations with Africa. Egypt was occupied and the acquisition of a huge tropical African empire, ready to fight major wars for Sudanese deserts and South African *kopjes*,[45] was embarked upon. There began the scramble to appropriate 90 per cent of the African continent within sixteen

43. See the Report of the Select Committee of the British House of Commons of 1865.

44. R. Robinson, J. Gallagher and A. Denny, *Africa and the Victorians: The Official Mind of Imperialism,* Macmillan and Co. Ltd., London, 1961, p. 14.

45. *Ibid.*, p. 17.

years. The British forced anti-slave treaties upon coastal chiefs and hunted for the Portuguese slavers;[46] they also concluded treaties of protection in the Niger Delta with local chiefs. The French too had signed numerous treaties on Benin.[47]

On the East Coast, the British Government preceded the trader to establish spheres of interest in the areas where Britain had enjoyed an unchallenged supremacy since the Napoleonic Wars. Zanzibar was the base. Arab and African allies were kept loyal by treaty, subsidy or threat.[48]

There were at that time attempts to establish a South African republic which would encompass the Boer and the Bantu in a confederation similar to the one embracing the English and the French in Canada. This idea, seminal and wise though it was, was soon dropped, but something similar underlay the *condominium* of the Anglo-Egyptian Sudan established a few decades later.

The Ashanti Confederacy was created by Africans before the Ashanti invasion in 1873 of the Fanti Confederation threatened to wipe out the British stations. The forts on the Gold Coast fell foul of the Ashanti Confederacy which dominated the hinterland, and the Ashanti closed the trade paths until Captain George Maclean, the political agent of the Company, smoothed down the Ashanti. The British subsequently bought out the Dutch forts on the Gold Coast.

The British occupation of Egypt in 1882 under Gladstone's second ministry led to international rivalry, French and German, and the beginning of the partition of Africa. British interests in the Congo began to be threatened by Leopold and the French. British occupation of Egypt also had important effects over East Africa and South Africa between 1882 and 1885. The British East Africa Company was given the charter in 1890.[49]

The Berlin Conference of 1884-5: The bogey of an international status for River Niger was laid by George Taubman Goldie's enterprise in treaty-making. One of the principal achievements of the Conference for purposes of international law was that it fashioned a definition of "effective occupation". The Congo was divided between Portugal, France and the International Association.[50]

The Egyptian crisis was the moving cause behind the flurry of claim-staking in West Africa between 1883 and 1885. This is evidenced by the relative calm which obtained there during the following decade.

Trade in the Congo Delta was dominated by British firms. In the interior, Lieutenant Cameron had entered into a series of treaties in the 1870's which

46. *Ibid.*, p. 34.
47. *Ibid.*, p. 175.
48. *Ibid.*, pp. 41-2.
49. *Ibid.*, pp. 162ff.
50. *Ibid.*, pp. 172-8.

gave the United Kingdom an option on the inner basin of the river.[51] While the British Government rejected the option, French and Belgian private enterprises were ready to take the Congo seriously.

King Leopold II of the Belgians had floated the International Association to explore Central Africa at the end of the 1870's, and sent Stanley on another mission to open communications between the navigable Congo and Stanley Pool in the interior. Brazza also acted in the name of the French section of the International Association. To avoid the ruin of Gabon, the French Government in 1879 authorised Brazza to make a treaty at Stanley Pool. Just as the British had opened up the Niger hinterland in the 1850's, the French Government opened up the Congo basin in the 1870's.[52]

Treaties with local chiefs in the Niger and Oil Rivers Districts were thereafter being rapidly concluded so as to induce them to accept British protection.[53] On his own initiative, he quickly entered into a series of treaties with the local potentates in anticipation of the Berlin Conference by ensuring the lower Niger to the British and the Upper Niger to the French.

Goldie's National African Company had waged a price war against the *Compagnie du Senegal* and the *Société française de l'Afrique Equatoriale* since 1880. Goldie had by October, 1884 bought out the former company and soon afterwards bought out the latter. His agents negotiated a series of treaties with the riverain chiefs. While the Conference was sitting in Berlin, Thompson was moving through Northern Nigeria, making treaties for the National African Company in Sokoto and Gandu.[54] With this collection of treaties, purchases and promissory notes, the British Government succeeded, at the Berlin Conference, to establish its claim to a sphere of influence over the Lower Niger.[55]

The demarcation between the Niger districts and the German Cameroons was carried out by an exchange of notes between May and June 1885. The second step taken by the Company was to be the notification of its intention to establish a protectorate; and the third was the grant of the charter incorporating Goldie's National African Company as the Royal Niger Company.

Let us conclude this hustled history with a brief summary of the international agreements and treaties by which the boundaries between the various European Powers were fixed after the Berlin Conference:

(i) Anglo-French intervention in Egypt in 1871-1882. The Suez Canal was administered under the Treaty of Constantinople, 1888;

(ii) Anglo-Congolese Treaty (1894): Leopold recognized British sphere in the

51. A.B. Keith, *The Belgian Congo and the Berlin Act* (1919), p. 27.
52. Robinson, Gallagher and Denny, *op. cit.*, pp. 168-9.
53. *Ibid.*, p. 171.
54. J.B. Thomson, *Joseph Thomson, African Explorer*, (1896), pp. 137, 143, 160.
55. For treaties signed with local chiefs before the Berlin Conference see the London Gazette of 5 June 1885 and Hertslet's *Map of Africa by Treaty*, 2nd edn., p. 440.

Upper Nile which had been laid down in the Anglo-German Arrangement of 1890;[56]
(iii) Anglo-French Agreements on Nile Basin (1899); on West Africa, 1889, 1890, delimited respective spheres of influence of both: France kept Central Sudan from Darfur in East to Lake Chad in West, but was excluded from the Nile Basin, thus removing the French Challenge to the Nile Basin;
(iv) Anglo-French Agreement of 1862 on Zanzibar;
(v) Anglo-German Agreements on East Africa, 1890: Under the Anglo-German Agreement of 1886, the German African Company gained control of Dar es Salaam and Pangani; and Britain implicitly accepted German claim to a protectorate over Witu and the coast fronting the Sultanate;
(vi) Anglo-German Agreements on West Africa (1893);
(vii) Anglo-Italian Agreement on East Africa (1894); merely delimited the British and Italian claims along the Somali coast;[57]
(viii) Anglo-Portuguese Convention (1890-1);
(ix) Anglo-Portuguese Treaty on the Congo (1882), discovery and prior occupation of Congo. British most-favoured nation treatment in Congo trade on Anglo-Portuguese Commission to supervise traffic.

Sir Alan Burns, a former Governor of Nigeria, had this to say on the European scramble for Africa at the Berlin Conference: "No European nation had the right to assume sovereignty over the inhabitants of any part of Africa, and the claims put forward by the various Governments at the Berlin Conference in 1885 took little account of the rights of the people who lived in the territories claimed."[58]

D. *The Period of Colonial Rule*

Although the Berlin Conference of 1884-5 marks the effective beginning of the partition of Africa into colonies of the European Powers,[59] there had been certain spheres of influence and a few colonies like the Gold Coast in 1850 and Lagos in 1861. Also, a few international protectorates like the one over Tunis[60] had been created. The vast majority of the African dependencies, however, became established since 1885, and even the older ones like the Gold Coast and Nigeria took their final shape afterwards as the result of boundary agreements involving extension and readjustment of territories.

56. Robinson, Callagher and Denny, *op. cit.*, p. 330-1.
57. There were Secret Annexes. See L. Woolf, *Empire and Commerce in Africa*, 1920, pp. 170-1, 221-7.
58. *History of Nigeria*, 4th Edition, 1948, p. 277.
59. For a fairly recent objective analysis see L.H. Gann and P. Duigan (ed.), *Colonialism in Africa 1870-1960*, vol. I, Cambridge University Press, London, 1969.
60. Cf. *Nationality Decrees in Tunis and Morocco*, 1923. PCIJ, Series B, No. 4, Hudson World Court Report, p. 143.

Once the various Powers had parcelled out the continent and consolidated their boundaries by international treaties, the existing sovereignties of the old kingdoms and city states became submerged under the new sovereignties of the "metropolitan" Powers. Another important effect of colonization has been the fragmentation of previously homogenous ethnic groups into two or more under different colonial administrations. Notable examples are French and British Togoland as well as the Cameroons, Italian, British and French Somaliland, Southern Katanga and Northern Zambia, Algeria-Morocco-Mauretania, Eastern Ethiopia-Somalia-Kenya, Guinea-Liberia-Sierra Leone, and, of course, the two Congos.

Prior to the establishment of colonial administration, many local potentates had, as we have seen, entered into numerous treaties most of which were understood as those of protection, although such treaties invariably contained clauses for annexation or cession of territories to the European Powers concerned. These local rulers were styled "kings" before the execution of the treaties, but were often regarded or treated for all practical purposes thereafter as "chiefs" only, thus implying that they had full sovereign powers to sign the treaties which *ipso facto* turned them into subordinates of the new sovereigns deemed to be recognized by the treaties in question. Yet, customary international law recognizes the validity of these "unequal treaties." Certain concession treaties have provoked controversies as interesting as treaties of annexation or cession of territories. Thus, the British South Africa Company founded in 1889 would appear to have based its claims on the disputed Rudd Concession of 1888 which was alleged to have been signed by King Lobengula and by which the way was paved for British Settlement in Zimbabwe (Southern Rhodesia).[61] It is ironical that in 1607 the then King of the Monomotapa (modern Zimbabwe) had been alleged to have ceded to the Portuguese all his kingdom's mining rights under the celebrated Treaty of Monomotapa which was cited in connexion with the Delagoa Bar Arbitration and which was also later used to support Portuguese claims to Mashonaland.[62]

In view of the substituted sovereignties of the European States for those of the territories grouped into the new political aggregations, the historic modes of international intercourse were closed to these indigenous States and kingdoms. The new external relations became, as a matter of international law, identified with those of the European rulers. Boundary and trade agreements were concluded between the metropolitan Powers based in Europe,[63] since

61. See P.T. Makonese, "Zapu and the Liberation of Zimbabwe" in *Africa Quarterly*, vol. X, No. 1, April-June 1970, at p. 41.
62. J.S. Keltie, "The Partition of Africa," pp. 54-55. Edward Stanford, London, 1893.
63. Two boundary treaties of contemporary relevance may be cited here in connexion with a current dispute between Nigeria and the Cameroons. The dispute concerns

the various local administrations were directly subject to their home Governments and had no power to enter into any extra-territorial relationships with other countries. Thus it was that extradition, economic and technical co-operation agreements were made by the home colonial governments between and among themselves in respect of their African colonies often over the heads of the leaders of the peoples concerned. We shall have occasion to refer to the problems raised by these in the immediate post-independence years. For the present, it is sufficient to recall the Berlin Treaty which was entered into among the European Powers to establish the regime for the Niger and the Congo Rivers, especially to ensure freedom of navigation and of other international uses in respect of both rivers. There was not a single African territory or representative as a party to this treaty, but there was an Asian State – China. In this connexion, it is significant that, when the nine riparian States came to establish the River Niger Commission under a Convention with an annexed Statute in 1964, they contended themselves with merely abrogating the regime set up by the parties to the Berlin Treaty, while reserving to these whatever rights and obligations that might still be deemed to be outstanding among them. The riparian States clearly did not regard themselves as in any way bound by the Berlin Treaty of 1885.[64]

In the technical field may be mentioned the Commission for Technical Co-operation in Africa South of the Sahara (CCTA) which was established jointly by the British, the French, the Belgian, the Portuguese, the Union of South Africa and the defunct Federation of Rhodesia and Nyasaland Governments under an Agreement signed in London on 18 January 1954, although a series of conferences had been held between them since 1945. The Commission was concerned with the promotion of technical co-operation between the member Governments and their dependencies, to make recommendations, supervise and advise in technical matters, and to administer the subsidiary organs and funds. Its members were Belgium, Cameroons, Congo (Brazzaville), Congo Leopoldville (formerly Kinshasa, now Zaïre), France, Gabon, Ghana, Guinea, Liberia, Mali, Nigeria, Rhodesia and Nyasaland (since defunct), Union of South Africa and the United Kingdom. The Commission itself comprised one delegate for each member Government with alternates and advisers meeting

the determination of the exact boundary line, both offshore (because of the mineral oil found there) and inland (which are regulated by two sets of treaties) between the two friendly countries. There is, *inter alia*, the Agreement between the United Kingdom and Germany respecting (a) the settlement of the frontier between Nigeria and the Cameroons, from Yola to the Sea and (b) the regulation of navigation on the Cross River (British Treaty Series, 1913, No. 13, signed at London, 11 March 1913, with maps). Also, there is the Exchange of Notes between the United Kingdom and the French Government respecting the boundary between British and French Cameroons (British Treaty Series, No. 34, 1931, signed at London, 9 January 1931, with maps).

64. For a discussion of this matter, see my article, "The Berlin Treaty and the River Niger Commission," in A.J.I.L., vol. 51, No. 4, p. 873, October 1963.

once a year; it had a Joint Secretariat, a Scientific Council of eminent scientists, an Inter-African Bureau for Soils and Rural Economy, an Inter-African Labour Institute, an Inter-African Pedological Service, an Inter-African Bureau for Epizootic Diseases, the Tsetse Fly and Trypanosomiasis Permanent Inter-African Bureau, and a Foundation for Mutual Assistance in Africa South of the Sahara. The Commission had working relations with such other intergovernmental organizations as the ILO, the WHO, UNESCO, and the United Nations Technical Assistance Board. It had its headquarters in London. The CCTA has, however, been absorbed as the fifth specialized commission of the Organization of African Unity under the name of the Scientific, Technical and Research Commission with headquarters in Lagos (Nigeria).

The Committee on the Control of the International Zone of Tangier, as the International Administration responsible for the territory, was wound up by the Final Declaration of the Conference signed there on 29 October 1956, by the Governments of Belgium, France, Italy, Morocco, Netherlands, Portugal, Spain, United Kingdom and the United States of America. The Declaration abolished the international regime of the Zone and restored Moroccan sovereignty therein. It was provided in the annexed Protocol that Morocco succeeded to the assets and liabilities of the International Administration of the Tangier Zone regime.[65]

The foregoing brief account of illustrative agreements to which the European metropolitan Powers were the exclusive or the active parties during the colonial period emphasize the idea that only sovereign States were at any time the subjects of customary international law. The drama of international legal relations was being played out, so far as Africa is concerned, by European Governments among themselves in regard to economic, technical and cultural matters. Customary international law was developing in many respects as a result of the continuous changes taking place in the continent, but the African dependencies were mere spectators at the game. The latter's contribution, if any, lay in the fact that it was their territories and their resources that supplied the raw material for evolving rules and practices of international relations during the hey day of colonization, 1885-1945.

Of considerable interest to public international law generally has been the development of the mandate system as an indirect result of the European colonization of Africa. Some of the dependencies there found themselves involved in a new form of political subjection.

After the defeat of Germany in the First World War, the German colonies in Africa were allocated among the Allies as mandated territories consisting of communities "not yet able to stand by themselves under the strenuous conditions of the modern world." Their inhabitants were to be helped by each

65. A.J. Peaslee, *International Government Organizations*, vol. I, p. 283, Revised Second Edition. M. Nijhoff. Netherlands. 1956.

European mandatory to achieve eventual independence and selfgovernment. Kamerun was divided into two, each part being placed under British and French mandates respectively; Togoland was made a French mandate and Tanganyika a British mandate; to Belgium went Rwanda and Burundi; and South West Africa was mandated to the Union of South Africa. These six Territories were, under s. 22 of the League of Nations Covenant,[66] to be administered by the Mandatory Powers subject to the League's ultimate responsibility through the Permanent Mandate Commission. The United Nations Charter, in Chapters XII and XIII, has styled them Trusteeship Territories under the Trusteeship Council established for the purpose.[67] An incidental question of great legal interest arose not so long ago out of the mandating of South West Africa (now called Namibia) to the Union of South Africa. The latter refused to place the Territory under the United Nations Trusteeship System on the ground that it was accountable only to the League of Nations to which, in its view, the United Nations had not succeeded. In an Advisory Opinion, the World Court ruled against South Africa[68] which, however, has refused to comply.

Despite the fact that colonial rule has meant the loss to indigenous African States and kingdoms of their powers to enter into external relations, and although such powers were exercised by the European metropoles until the recent attainment of independence, Africa has continued to make its contribution to the development of the colonial Powers, but, in view of their preoccupation with attaining independence at all costs, they hardly ever had the time or the desire to observe such niceties. It was only after the formal inauguration of the new State that questions have been raised about what treaties have been taken over from the predecessor Government and to what extent, if any, the new State could be deemed to be bound by them. In East Africa, the procedure followed was that the Government of the new State gave notice of its intention regarding inherited treaties by means of unilateral declaration to the United Nations Secretary-General and to Member States. This was then followed by a disclaimer of responsibility by the United Kingdom Government.

At this point, it is to be observed that the procedures adopted and the legal positions taken would seem to have varied from West to East Africa. Nigeria and all the other English-speaking West African States have taken the line that they should declare as early as possible to the United Nations and the world those international treaties that they considered to be binding, while reserving their position regarding the others which they would study and in respect of which they would later declare their stand from time to time.[69] On the other hand, Tanganyika and her neighbours (Uganda, Kenya and Malawi) would seem to have preferred declaring that all bilateral treaties would be regarded as binding for only two years from the date of independence of Tanganyika (fifteen months in the case of Uganda and the others), after which all affected third States should come forward to renegotiate these treaties if they were intended to continue in force in regard to the former. Multilateral treaties would, on the basis of reciprocity, continue in force until other arrangements were made.[70] The French-speaking African States would appear, on the whole, to have followed the Nigerian example.[71] All the new States are united in demanding that the ideal solution is that all bilateral treaties should be renegotiated between them and the affected third States.

In spite, however, of these seeming differences of approach, the legal result would appear to be the same, namely, that a new principle of succession of State in customary international law has emerged to the effect that there is no automatic succession when colonial Territories attain political independence and self-government. This necessarily implies also that the third parties with which the colonial Powers had entered into the treaties in question have no automatic right to enforce them against the new States, even in the case of so-called *dispositive* or territorial treaties. The old distinction between partial and universal succession must accordingly be viewed now, with care.

To assert this new principle against automatic succession is not necessarily to deny the relevance to contemporary problems of many of the rules governing State succession in customary international law. It is only to emphasize that there is need to rethink and redefine certain aspects of the traditional law on the subject in the light of the phenomena of decolonization and the progressive development and codification of international law. It has been a realization of this new factor in contemporary international life that has led the General Assembly to request the International Law Commission to undertake, as a matter of urgency, the study of the subject of succession of States and Governments with a view to its progressive development and codification.

Admission to the United Nations: At the inception of the United Nations in 1945, there were fifty-one Member States, including only four from Africa. Today there are forty-one African States. Membership of the Organization proved to be a status symbol for all newly independent States everywhere.

66. Part I of the Peace Treaties of 1919; 13 A.J.I.L. 1919 Supplement.

67. Secretary-General's *Report on Trusteeship Agreements*, in The Journal of the General Assembly, 1946, No. 62, Supplement.

68. *The International Status of South West Africa* (1950), ICJ Rep. 128.

69. See, e.g. *Nigeria's Treaties in Force for the period 1 October 1960 to 30 June 1968*, published by the Federal Ministry of Justice, Lagos. Printed by the Federal Ministry of Information, Printing Division, Lagos, 1969.

70. See Report of the Fifty-Third Conference of the International Law Association held at Buenos Aires from 25 to 31 August 1968, pp. 619-624.

71. *Id.*, pp. 631-2. The absence of lists of treaties in Francophone African States has led to much confusion, since to make a list without a territorial application clause is a technically complex operation; *id.*, p. 599.

The Organization provides the best forum for the airing of grievances about decolonization, *apartheid*, racial discrimination and colonialism. In the emerging fields of inter-African relations and of pan-Africanism, the shared emotions of all Africans are a common opposition to colonialism, which to them is characterized by alien rule, political and economic oppression and social discrimination. For these and other important issues, the United Nations provides fresh scope for the exercise of their new-found sovereignty after the constriction imposed by colonial rule in the preceding seventy years or so. The declared purposes and principles of the United Nations, as stated in Article 1 of the Charter, are broadly (a) to maintain international peace and security (b) to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, (c) to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and (d) to be a centre for harmonizing the actions of nations in the attainment of these common ends. These are aspirations that would command the absolute allegiance of all States, large and small. And, when to these four principles is added that in Article 2(1), namely, that "The Organization is based on the principle of the sovereign equality of all its Members", there is little else that the new African States, jealous of their newly won independence, could wish or hope for. They, therefore, embraced the United Nations as they became independent. Of the influence they have since been exerting on its work, we shall make mention in appropriate contexts later.

The organization of African Unity: While the United Nations provides them with the necessary forum for the promotion of their international interests, that is, between the several African States and the outside ones, the need was soon felt for a smaller forum for the discussion and promotion of inter-African relations in the economic, technical and scientific fields. In accordance, therefore, with Article 52 of the United Nations Charter, some five States committed to radical policies formed the so-called Casablanca Group early in 1961, while some twenty-one preferring a moderate policy formed the so-called Monrovia Group in May of the same year. In three subsequent meetings in Lagos, one at the end of 1961 and two during 1962, an inter-African charter was drawn up and in fact signed by a majority of the member States before it was decided to suspend further action until the Casablanca Group could be persuaded to join the rest at the meeting of Heads of State and Government scheduled to take place at Addis Ababa in May 1963. There the Charter of the Organization of African Unity, which is substantially the same as the Lagos Charter, was signed and adopted.[72]

The principal organ of the OAU are the Assembly of Heads of State and

72. See my article, "The Charter of the Organization of African Unity," in 59 A.J.I.L. 243-267 for a detailed analysis of the Charter and its background.

Government, the Council of Ministers, the Secretariat and the Commission of Mediation, Conciliation and Arbitration which, in accordance with article 19 of the OAU charter, is regulated by its own separate Protocol.[73] The importance attached to this Commission in the scheme of the OAU is consistent with the provision of Article 52(2) of the United Nations Charter which requires that "the Members of the United Nations entering into such (regional) arrangements of constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council." The OAU itself regarded the Commission as indispensable, at least in its formative years.[74] While it has not actually dealt with any dispute between member States of the organization since its establishment, it has performed the useful role of provoking bilateral and even multilateral settlements[75] on the part of members anxious to avoid having to appear before either the Board of Conciliation or the Arbitral Tribunal of the Commission. There is thus the paradox that it is serving a positive end by a negative means, that is to say, that it is helping to settle disputes by merely doing nothing because it is not called upon to do anything. This enforced inactivity on the part of the Commission led to some member States requesting at the 1969 Addis Ababa Summit, either its abolition or its being given other duties such as legal research for the organization. It is reassuring, however, that at the recent Summit held in September 1970 at Addis Ababa the Commission has been given a new lease of life by the appointment of new members.

Regional Organizations in Africa: The OAU has probably set the pace for

73. Article 19 provides: "Member States pledge to settle all disputes among themselves by peaceful means and, to this end, decide to establish a Commission of Mediation, Conciliation and Arbitration, composition of which and conditions of service shall be defined by a separate Protocol to be approved by the Assembly of Heads of State and Government. The said Protocol shall be regarded as forming an integral part of the present Charter."

74. The Commission with its Protocol has been fully discussed in my article, "The Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity," in British Year Book of International Law, 1964, pp. 336-354.

75. Because the Commission was not yet established, the OAU Council of Ministers appointed, on 15 March 1963, an *ad hoc* committee of seven countries – Ethiopia, Ivory Coast, Mali, Nigeria, Senegal, Sudan and Tanganyika – to settle the border dispute between Algeria and with Morocco's consent. The Committee achieved a cease-fire, thus paving the way for later settlement. Again, Morocco refused to attend the OAU Summit at Accra in 1963 on account of the presence of Mauritania which it claimed as an integral part of her territory. (This claim was in August 1970 publicly renounced by Morocco). Reference may also be made to the tripartite frontier disputes between Somalia and Ethiopia, on the one hand, and between Somalia and Kenya, on the other. They even led in 1963 to the formation of a military alliance between Ethiopia and Kenya against Somalia: See "The Role of Africa in World Affairs," in *The Study of Africa*, ed., by P.J.M. McEwan and J.B. Sutcliffe, Methuen and Co., Ltd., London, 1965.

the formation of a number of intergovernmental organizations in various parts of the continent. We shall consider them briefly as follows:

(i) *East Africa: The East Africa Common Services Organization* was established in London in 1962 to take over from the British East Africa High Commission services previously administered by the latter for Kenya, Uganda and Tanzania. There were two main organs of the EACSO:

(a) the East African Common Services Authority made up of one Minister from each of the three constitutent States; and

(b) a Central Legislative Assembly made up of twelve Ministers, nine members elected by each of the legislatures of the three States, a Secretary-General and a Legal Secretary. The Central Legislative Assembly had powers in respect of customs and excise, posts and telegraphs, telephones, radio communications; civil aviation, railways, harbours, inland water transport, merchant shipping; interterritorial research, university institutions; public service commissions; allocations from the distributable revenue pool.

The East African Economic Community was established by a treaty signed in Kampala on 6 June 1967 by the Presidents of Kenya, Uganda and Tanzania. The community has since taken over the assets and liabilities of the Common Services Organization as well as its two main organs; it is also to have an East African Development Bank.

(ii) *West Africa:* At the Conference held in Accra from 27 April to 4 May 1967, Dahomey, Ghana, the Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo, and Upper Volta agreed to establish a West African Common Market.

(iii) *French-speaking Africa:* There have been established the following regional organizations:

(a) *The Conseil de l'Entete* was established at Abidjan in Ivory Coast on 29-30 May 1959, by four States – Dahomey, Ivory Coast, Niger and Upper Volta – to comprise a customs union, harmonization of tax laws and coordination of their finances, judicial systems, public services, labour forces, communications and public health projects. A Solidarity Fund was also to be created. Togo joined the Council in 1966. When the original four members gained their independence outside the French Community in July 1960, they entered into economic agreements with France, and all except Upper Volta also signed defence agreements with her in April 1961.

(b) *A West African Monetary Union* was formed in Paris on 12 May 1962, consisting of Dahomey, Ivory Coast, Mali, Mauritania, Niger, Senegal and Upper Volta with the object of retaining the then existing C.F.A. franc at the rate of 50 C.F.A. francs per 1 French (new) franc, C.F.A. standing for *Communauté Financiere Africaine.*

(c) *A Central African Customs Union,* comprising the Cameroon and the members of the previous Equatorial Customs Union made up of the Central African Republic, Chad, Congo (Brazzaville) and Gabon, was established i. Brazzaville on 8 December 1964, and came into force on 1 January 1966, with headquarters in Bangui, Central African Republic.

(d) *Organization Commune Africaine et Malgache* (OCAM), a joint African and Malagasy organization, consisting of thirteen French-speaking States – Cameroon, Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal, Togo and Upper Volta – was established at Nouakchott, Mauritania, on 12 February 1965. OCAM later admitted Rwanda as the fourteenth member and Congo (Kinshasa, now Zaïre) as the fifteenth on 26 May 1965; the number was reduced to fourteen when, on 24 June 1965, Mauritania withdrew from membership. The origin of the OCAM is interesting. The first association of French-speaking African States was the *Union Africaine et Malgache* (UAM) which was established in Tananarive, Madagascar, in September 1961 by twelve States known as the "Brazzaville Group." It was later superseded by the *Union Africaine et Malgache de Co-operation Economique* (UAMCE) which was created in March 1964, and was itself superseded nearly a year later by OCAM whose charter was adopted at Tananarive during a conference held on 25-28 June 1966. Like the OAU, it has, three principal organs, a Conference of Heads of State, a Council of Ministers and an Administrative Secretary-General. Its first President, M. Ould Daddah of Mauritania, described OCAM as "an African grouping which has the aim, within the framework of the OAU, of reinforcing co-operation and solidarity among the African States and Madagascar in order to accelerate their development in the political, economic, social, technical and cultural spheres."

(e) *A West African Customs Union,* the *Union dondaniere des etats d'Afrique Occidentale* (UDEAO), consisting of Dahomey, Ivory Coast, Mali, Mauritania, Niger, Senegal and Upper Volta, was established on 3 June 1966, and began functioning on 15 December 1966. It is not clear what the exact relationship is between this body and Monetary Union formed on 12 May 1962. The two are probably intended to coexist, as their membership is identical in both cases.[76]

Administration of International River Basin Development: Because of the significant development in the area of international river and lake basins in Africa within the past decade, we shall describe only the important ones.

The Organization of the Riparian States of the River Niger. Organization des Etats Riverains du Fleuve Senegal, consisting of Guinea, Mali, Mauritania and Senegal, was established by a statute on 24 March 1968. There are four constituent organs: a Conference of Heads of State, a Council of Ministers, an Interparliamentary Council which is a consultative body, and an Executive Secretariat with headquarters at Dakar and subdivided into three sections,

76. See *Treaties and Alliances of the World,* Keesing's Publications Ltd. Charles Scribner's Sons, New York, 1963, pp. 181-183.

one section dealing with development of the resources (e.g., navigation, hydro-power and irrigation) of the Senegal River basin, a second section with planning and development, and a third with educational, cultural and social matters. This organization originated in the *Comite Inter-Etats Pour L'Amenagement du Basin du Fleuve Senegal* established by the same four States under a convention of the same name in Bamako on 26 July 1963.[77] The Committee was composed of one Minister from each State.

The River Niger Commission was established under an Agreement Concerning the River Niger Commission with respect to navigation and transport on the River Niger at the third conference held in Niamey, Niger, from 23 to 25 November 1964, by nine States – Cameroon, Ivory Coast, Dahomey, Guinea, Upper Volta, Mali, Niger, Nigeria and Chad; Cameroon, Chad and Ivory Coast are not directly riparian to the River Niger, but they are accorded equality of status with the other six. The first conference was called in Niamey in February 1963, but it was at the second conference in October 1963 that the text of the agreement entitled the Act regarding Navigation and Economic Co-operation between the States of the Niger Basin was adopted by the nine States.[78] With its headquarters in Niamey, the Commission operates through its General Secretary and its staff under a chairman. Its main task is to act as a consultative body with some planning functions and a clearing house of information regarding the uses of the river, its tributaries and sub-tributaries. It serves as a medium for resolving possible disputes arising among its members with regard to freedom of navigation and charges for the use of any hydrographic installations.

The Lake Chad Basin Commission, consisting of Chad, Cameroon, Niger and Nigeria, was established under a *Convention et Status Relatifs a La Mise et Valeur du Bassin du Tchad* signed on 22 May 1964 at Fort- Lamy. In the annexed statute is described the commission's composition and functions. It is made up of eight commissioners, two from each State, and its work is carried out by an Executive Secretary and his staff. The Commission must be consulted by any member State before undertaking a project likely to affect the interest of another member.[79] It also prepares regulations and planning, collects and evaluates data, and supervises studies and construction projects, as well as undertakes schemes for the joint exploitation of the resources of

77. Pp. 133, 151 of Garretson and ors. (ed.), "The Law of International Drainage Basins," (1967) Oceana Publications, New York.

78. For an account of the background to the Convention signed in Niamey in February 1963, see Elias, "The Berlin Treaty and the River Niger Commission," in 57 A.J.I.L., 1963, pp. 873-882; also Schreber, "Vers Un Nouveau Regime International du Fleuve Niger," 1963 Annuaire Française de Droit International 866, (1963) and "Accord Relatif a la Commission du Fleuve Niger et a la Navigation et Aux Transports sur le Fleuve Niger," 1964 Annuaire Française de Droit International 813 (1964).

79. Garretson, *op. cit.*, pp. 25, 133, 151.

the Lake Chad Basin. It is, however, a purely advisory agency, and its decisions are subject to approval by the Governments of the member States.

The Permanent Joint Technical Commission for the Nile River was set up under article 4 of the Agreement between the Republic of the Sudan and the United Arab Republic for the Utilization of the Nile Waters which was signed on 8 November 1959. It was to deal with the problems arising out of the UAR's proposals to build the Aswan High Dam on the Nile that the Commission, consisting of an equal number of members from both States, was established. The Commission's functions are contained in the by-laws of the Joint Permanent Technical Committee of the Waters of the Nile which was approved in July 1960.[80] These include general planning, execution of projects, supervision of studies, and devising a system of fair allocation of waters in the dam's reservoir during periods of low water. It must submit an agreed opinion to the two Governments whenever any discussion about new projects is about to be undertaken with any other riparian State; and it must supervise the execution of all technical agreements that may result from such negotiations. This extended jurisdiction of the Commission would appear to be unusual in that, contrary to normal practice, it regards the Nile as one geographical unit despite the fact that it is divided by international boundaries through which it flows. In the case of the Rivers Senegal and Niger or Lake Chad, as in that of many other international rivers outside Africa, the area jurisdiction of river commissions is normally confined to so much of the river basin as is covered by the territory of its members.[81]

Certain Notable Activities in the field of International Law: One of the earliest events in the post-independent era was the Conference held in Lagos in January 1961, by the International Commission of Jurists (based in Geneva) on the subject of the Rule of Law: Government Action, State Security and Human Rights. The Conference, which was attended by some 194 judges, practising lawyers and jurists from over thrity-two countries, was very useful in focussing the attention of the participants, particularly those from the newly independent States in Africa, on the fundamental problems of the individual and the State, of stability and change, and of law and order in the international community. The experiences gained during that conference led to the holding of a series of purely African Conferences at Lagos in August 1963, at Addis Ababa in November, 1963, and at Lagos in January 1964, at the end of which a Convention and a Statute of the Commission of African jurists were unanimously adopted. This Commission was later received into the O.A.U. as its sixth Specialized Commission within the meaning of Article

80. U.N.T.S. No. 6519, vol. 453, p. 64; *Legislative Texts and Treaty Provisions,* pp. 143-9.

81. Garretson, *op. cit.*, pp. 138-147. See, in particular, Chapman (ed.), *The International River Basin – Proceedings of a seminar on the Development and Administration of the International River Basin,* 1963, University of British Columbia.

20 of the Charter. Among the objects of the Commission as stated in Article 1 of its Statute is "to consider and study international law in its relation to problems of African States."[82]

At the instance of Mr. Charles Rhyne, its President, the World Peace Through Law Centre also held a global conference in Lagos in December, 1961, as part of its series of seminars in Athens, Rio de Janeiro, Manila and Geneva, on the general question of how to achieve world peace through the universal application of international law. As this was the African Conference in the series, most of the delegates came from Africa.

In more recent times, two other conferences of great interest have been held in the eastern as well as the western parts of the continent. Under the joint auspices of UNITAR and UNESCO, the first regional training course on international law was held at Dar-es-Salaam in Tanzania from 14 August to 7 September 1967. Twenty African States were represented by twenty-six participants. The four subjects of the course were the Law of Treaties, Diplomatic Relations and Immunities, the Normative Functions of the United Nations Systems, and the International Economic and Social Law. Subsidiary subjects also studied included "Law and Practice of African States in the Making of Treaties" and "Succession to Treaties in Relation to African States." The whole seminar was part of a UN Programme ofAssistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law which is intended to organize regional training and refresher courses every two years in Africa, Asia and Latin America in rotation. Beginning in 1968, regional seminars for the discussion of regional or international legal problems are also to be held in alternate years in the same three regions of the world.[83]

The other conference, entitled International Law and African Problems, was held in Lagos under the joint auspices of the Carnegie Endowment for International Peace, New York, and the Nigerian Institute of International Affairs, from 14 to 18 March 1967. The subjects studied were Treatment of Aliens, the Method of Encouraging the Wider Study and Appreciation of International Law in Africa, Government Legal Advising in the Field of Foreign Affairs, Treaties and Succession of States and Governments in Tanzania, the Relevance of International Law to African Problems, and Co-operation in the Utilization of International Rivers in Africa. One of the conclusions of the Seminar was the setting up of a Standing Committee to consider and recommend the feasibility of (a) the publication of an African Year Book of International Law, and (b) the establishment of a Documentation Centre as

82. See *A Summary Report of the Proceedings of the Conference of the Commission of African Jurists*, Lagos, Nigeria, 27-29 January 1964. Printed by the Nigerian National Press Ltd., Lagos.

83. See General Assembly resolution 2213 (XXII), 14 December 1967. Also H.W. Brigg's note on "The Dar-es-Salaam in International Law, 1967," in 62 A.J.I.L., pp. 454-6, 1968.

means of promoting the dissemination of knowledge of international law in Africa.[84] The Standing Committee met in June 1968 under the same auspices and at the same venue, whereat The African Institute of International Law and The Documentation Centre were agreed to be established with temporary headquarters in the Nigerian Institute of International Affairs, Lagos. A Draft Constitution of the Institute was adopted and its Executive Council was established. The Council was to have met again in January 1969, but it could not do so for lack of funds.[85] Among the papers considered were those on the Teaching of Public International Law in Nigeria, East Africa and Kenya, and one on U.N. Programme of Assistance in international law.

Let us now briefly refer to the already well-known activities of certain African States in the judicial sphere. There was *the Northern Cameroon Case*[86] in which the then newly independent Republic of Cameroons brought an action before the World Court against the Government of the United Kingdom as the administering Power over over both the Northern and Southern Cameroons since 1922, first under The League of Nations mandate and later under the UN trusteeship system. The UK had administered both territories as integral parts of Nigeria. As a result of two separate plebiscites held under the UN auspices, the Northern Cameroons voted to join independent Nigeria in May 1961, while the Southern Cameroons voted to go with French Cameroons to form the Republic of the Cameroons. Because the latter Republic did not like the result of the plebiscite in the Nothern Cameroons, it took the matter before the International Court of Justice which, however, held that it had no jurisdiction to entertain the action. The issues involved in the two *South-West Africa Cases* before the ICJ at the suit of Ethiopia and Liberia, Africa's two oldest independent States on behalf of the others, is too well-known to need any repetition here. In its earlier ruling in the first case, the Court had held against the Union of South Africa that it had jurisdiction to hear the complaint of two States in respect of the trust territory of South West Africa (Namibia).[87] In its 1966 ruling, the Court decided by a majority of one that the same two States had no *locus standi* in the case,[88] a decision that has angered the majority of the Afro-Asian and the Latin American groups of States at the United Nations as much as it had bewildered the rest of mankind.

84. See "The Proceedings of the African Conference on International Law and African Problems," published by the Nigerian Institute of International Affairs, p. 106, 1967.

85. See *Verbatim Report of the Proceedings of the Standing Committee Meeting of the African Conference on International Law and African Problems.* 27-29 June 1968. Published by the Nigerian Institute of International Affairs, p. 47.

86. ICJ Reports, 1963, p. 15.

87. *South-West Africa: Preliminary Objections, Judgment* (1962) ICJ Rep. 314.

88. *South-West Africa, Second Phase, Judgment*, ICJ Reports, 1966 p. 6.

Decolonization has been one of the main preoccupations of the African and the Afro-Asian Groups at the United Nations and, together with the Latin American and often the Eastern European Groups, they have served to quicken the pace of independence and self-government through their activities at the United Nations, including the work of the Committee of Twenty-Four. There are now very few dependencies left, the most important being Angola, Mozambique, Guinea Bissau (Portuguese), Spanish Sahara and French Somaliland. Other significant changes, like the enlargement of African membership of the Security Council, the Specialized Agencies, the ICJ and the ILC – to name a few, have been effected during the last two decades in order to make the UNO a more representative and more comprehensive institution than ever before. What is more important is that the increasing participation on the part of the African and allied Groups has resulted in the General Assembly adopting a series of resolutions making it obligatory on UN subordinate organs like the International Law Commission and the UNCTAD to produce legal texts based on a progressive development and codification of international law. The adoption of the Vienna Convention on the Law of Treaties in May 1969 bears eloquent testimony to the modest contribution that Africa is making in this field. The Declaration on Peaceful Co-existence which was adopted in May 1970, in Geneva is, with all its defects, further evidence of the role of Africa and, indeed, the third world in the evolving contemporary international law.[89]

Conclusion

We have now made a brief survey of the long history of inter-State and international relations in Africa, dating back to at least ancient and pre-medieval times. Carthage, Tripoli, Cyrenaica and Ancient Egypt all played their parts in the North African pre-history, and subsequent movement along the northern coast and downwards to the coast of Guinea and beyond in the age of exploration and discovery under Hanno and Prince Henry the Navigator. All this while, little was known about the hinterland of the continent until the adventures of the Almoravids and the Tuaregs began to uncover ancient Ghana as having been in existence since 300 A.D. at least; it lasted, as we have seen, for almost 1,000 years. Then followed Songhai, Mali, Mossi, Bornu, Monomotapa in periodic succession in the following centuries. These exchanged diplomatists and envoys, formed alliances either for attack or for defence, and carried on their external relations in much the same way as their European counterparts did about the same period.

89. I have dealt more exhaustively with this subject in my contribution entitled "The New States and the United Nations" in the Special Number of *Foro International*, October 1970, Mexico.

From the fourteenth and the fifteenth centuries downwards, fresh adventure and the fortunes of trade disclosed the Yoruba and Benin empires, the Ashanti and the Fanti confederacy, the Congo and the Bunyoro kingdoms as flourishing States or congeries of States with some degree of regional intercourse among themselves and at any rate in limited commercial relations with the outside world. Trade brought slavery and colonization in its wake, the latter having been preceded by the scramble for Africa and Berlin Conference. Treaties of doubtful validity were signed between local representatives of European powers with African potentates by which the latter were deemed to have lost their erstwhile sovereignty to the former which henceforth alone conducted African external relations. During this colonial period were signed innumerable treaties of various kinds which have created the current problems of succession of States and Governments under customary international law.

Independence has led to membership of the United Nations and its organs and the consequent widening of the international horizon of all member nations, resulting in the establishment of new institutions and processes and in the enlargement of participation in the making and development of contemporary international law. No longer is the law of the World Court to be confined within the sometimes narrow limits set for it by the older few; modern international law must be based on a wider consensus, in the sense that it must be a reflection of the principal legal systems and cultures of the world. There is already emerging an "international law in a changing world." The contribution which the third world in general, and Africa in particular, is making to contemporary international law will in time increase both in quality and in quantity especially within the framework of the United Nations.